

September 30, 2002

D.T.E. 02-44

Joint petition of Colonial Gas Company d/b/a KeySpan Energy Delivery New England and NSTAR Gas Company for authorization and approval of an agreement to transfer certain facilities and the associated natural gas customers in the Town of Plymouth from Colonial Gas Company to NSTAR Gas Company

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## I. INTRODUCTION

On April 16 , 2002, Colonial Gas Company d/b/a KeySpan Energy Delivery New England (“Colonial”) and NSTAR Gas Company<sup>1</sup>(“NSTAR”) (collectively, “the Companies”) filed a petition with the Department of Telecommunications and Energy (“Department”), pursuant to G.L. c. 164, § 76, for authorization and approval of an agreement to transfer certain facilities and the associated natural gas customers in the Town of Plymouth (“Plymouth”) from Colonial to NSTAR. The Department docketed the filing as D.T.E. 02-44.

Pursuant to notice duly issued, the Department conducted public and evidentiary hearings at the Department’s offices on August 8, 2002. In support of its petition, the Company offered the testimony of Joseph C. Carroll of KeySpan Energy Delivery New England, and Stephen Chiara and Jeffrey Niro of NSTAR Gas and Electric Company. The record includes eleven responses to record requests and eleven exhibits.

## II. NSTAR-COLONIAL SERVICE AGREEMENTS

NSTAR presently holds the franchise right to serve Plymouth, as a successor corporation to Plymouth Gas Light Company (Exh. COS-4, at 1; Tr. at 27). In 1991, NSTAR determined that it was uneconomical to extend its distribution mains into a section of southernmost Plymouth known as Buttermilk Bay (Exh. COS-5, at 1; Tr. at 15). Therefore, NSTAR entered into an agreement with Colonial whose service territory abutted Plymouth to the south, whereby Colonial would serve those customers in the Buttermilk Bay area (Exh. COS-5, at 1). In 1992, NSTAR determined that it was also uneconomical to serve an

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<sup>1</sup> In the early 1990s, the time of the underlying agreements in this docket, NSTAR Gas Company was known as Commonwealth Gas Company. For ease of reference, we consistently use the later name.

area of southeastern Plymouth known as Cedarville (Exh. COS-4). Therefore, NSTAR entered into a second agreement ("1992 Agreement") with Colonial, whereby Colonial would extend its mains to provide service in the Cedarville area, until such time that NSTAR should extend its mains to that area (id.). Under these agreements, if NSTAR did elect to assume the responsibility for supplying the Cedarville and Buttermilk Bay areas, Colonial would sell the plant that NSTAR needed to serve these customers at a price equal to Colonial's original cost less depreciation (Exh. COS-2, at 2). On June 8, 1995, the Companies amended the 1992 Agreement to also include an area of southeastern Plymouth known as The Ponds (Exh. COS-5, at 1; Tr. at 15).

### III. TERMS OF SALE

On November 16, 2001, NSTAR notified Colonial of its decision to exercise its rights to serve Buttermilk Bay, Cedarville, and The Ponds (Exh. COS-2, at 2). The Companies entered into an agreement dated August 1, 2002 ("2002 Agreement"), whereby NSTAR would purchase Colonial's assets in Plymouth being used to serve those customers (Exh. COS-3). The Companies have agreed to a purchase price of \$1,928,738, for distribution mains, meters and installations, service lines, and unfinished construction (Exhs. COS-1, at 2; COS-10; DTE-RR-8). No additional stock or long-term debt will be issued by NSTAR to complete the transaction. A total of 1,104 customers would be transferred from Colonial to NSTAR, representing 1,080 residential customers and 24 commercial customers (Exh. COS-2, at 3; DTE-RR-7). NSTAR will commence service to these customers no later than seven days after the Department's approval of the 2002 Agreement (Exh. COS-3, at 3). The Companies have agreed to work cooperatively to ensure an orderly transition of Plymouth customers from Colonial to NSTAR (id.).

Although NSTAR has already extended its mains to The Ponds, a further extension of about 5,800 feet is necessary to extend service to 240 customers at Buttermilk Bay (Exh. COS-6; Tr. at 15-16). NSTAR plans to construct the main within the next twelve months (Tr. at 16). Until the main is completed, Colonial will continue to provide gas supplies to the Buttermilk Bay customers through its existing main used to supply its Cape Cod Division (Exh. COS-3, at 5; RR-DTE-2). NSTAR will collect meter data and bill customers at NSTAR's respective rates (Exh. COS-3, at 5; Tr. at 16, 20). In turn, Colonial will bill NSTAR separately for each Buttermilk Bay customer at Colonial's respective rates under which those customers formerly received service from Colonial (Exh. COS-3, at 4; Tr. at 20-21).<sup>2</sup> NSTAR stated that it will bear any difference between its billing rates and those charged by Colonial, and will not seek recovery of any difference through its Cost of Gas Adjustment Clause ("CGAC") (Tr. at 21; DTE-RR-1).<sup>3</sup>

The Companies assert that, using current billing rates and the customer consumption from July 2001 to June 2002, the transfer will result in lower bills annually for the associated natural gas customers (Exh. COS-2, at 3; DTE-RR-7). The Companies state that had NSTAR served the affected customers during the past year, Rate R-1 non-heating customers, other than those with zero-use, would have saved approximately 28 percent annually (id.). The Companies also assert that had NSTAR served these customers during the past year, Rate R-3 heating customers, other than (1) zero-use customers and (2) customers using heat

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<sup>2</sup> NSTAR will provide Colonial with meter-reading data, which Colonial will be able to verify through the presence of automatic meter-reading equipment (Tr. at 19-20).

<sup>3</sup> Based on historical CGA data, the Companies estimated that NSTAR would incur approximately \$50,000 per year in additional CGA expenses (Tr. at 21-23).

predominantly during the off-peak period, would have saved approximately 17 percent annually (id. at 3, 4). Lastly, the Companies assert that had NSTAR served the affected customers during the past year, Rate R-4 low-income heating customers would have saved approximately 18 percent annually (id. at 4).

The Companies estimated that had the commercial customers with typical use patterns been served by NSTAR during the past year: Rate G-41 low-load small general customer class would have saved approximately 29 percent; Rate G-42 low-load, medium general customer class would have saved approximately 10 percent; Rate G-51 high-load, small general customer class would have saved approximately 26 percent; and Rate G-52 high-load, medium general customer class would have saved approximately 31 percent (id.).

#### IV. STANDARD OF REVIEW

The Petitioners have framed their proposal as a request for approval under the framework of the Department's general supervisory powers under G.L. c. 164, § 76 ("Section 76"). Section 76 grants the Department broad supervisory authority over gas and electric companies, and directs the Department to make all necessary examination and inquiries and keep itself informed as to the condition of these companies to ensure service consistent with the "safety and convenience of the public."

However, sales of utility property are subject to review under G.L. c. 164, § 96 ("Section 96"). Section 96 states:

Companies subject to this chapter may ... consolidate or merge with one another, or may sell and convey their properties to another of such companies and such other company may purchase such properties,...provided that...the department, after notice and a public hearing, has determined that such purchase, sale consolidation or merger, and the terms thereof, are consistent with the public interest.

Both Colonial and NSTAR are gas companies as defined by G.L. c. 164, § 1. While the majority of Section 96 petitions involved the outright merger of one company by another, Section 96 is also applicable to petitions involving the sale or transfer of property in the form of plant serving a portion of a utility's service area or customer base, even where no merger or consolidation of the petitioning companies was involved. Fitchburg Gas and Electric Light Company/New England Power Company, D.P.U. 18661, at 1-2 (1976); Boston Edison Company/Boston Gas Company, D.P.U. 17444, at 2 (1972); Worcester County Gas Company/Spencer Gas Company, D.P.U. 647 (1922). Therefore, the Department will evaluate the Companies' petition under Section 76 and also apply, insofar as would be relevant to a sale of a portion of a utility's property to another utility, the standard of review under Section 96.<sup>4</sup>

The Department's authority to review and approve the selling and conveying of utility property to another utility is found at Section 96, which, as a condition for approval, requires the Department to find that mergers and acquisitions are "consistent with the public interest." In Boston Edison Company, D.P.U. 850, at 6-8 (1983), the Department construed the Section 96 standard of consistency with the public interest as requiring a balancing of the costs and benefits attendant to any proposed merger or acquisition. The Department stated that the core of the consistency standard was "avoidance of harm to the public." Boston Edison

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<sup>4</sup> The Department's standard of review for Section 96 petitions was developed for the purpose of considering guidelines and standards for mergers and acquisition activities. Mergers and Acquisitions, D.P.U. 93-167-A at 1 (1994). Although Colonial and NSTAR are not seeking to merge, a number of factors that would be considered in a merger petition, such as the definition of "consistent with the public interest," would also be applicable in cases where only a portion of a utility's assets or customer base is affected by the sale.

Company, D.P.U. 850, at 5 (1983). Therefore, under the terms of D.P.U. 850, a proposed merger or acquisition is allowed to go forward upon a finding by the Department that the public interest would be at least as well served by approval of a proposal as by its denial. Eastern-Colonial Acquisition, D.T.E. 98-128, at 5 (1999); NIPSCO-Bay State Acquisition, D.T.E. 98-31, at 9 (1998); Boston Edison Company, D.P.U. 850, at 5-8 (1983). The public interest standard, as elucidated in D.P.U. 850, must be understood as a "no net harm," rather than a "net benefit" test. Eastern-Colonial Acquisition, D.T.E. 98-128, at 5 (1999); NIPSCO-Bay State Acquisition, D.T.E. 98-31, at 9-10 (1998); Mergers and Acquisitions, D.P.U. 93-167-A at 7 (1994). The Department considers the special factors of an individual proposal to determine whether it is consistent with the public interest. Eastern-Colonial Acquisition, D.T.E. 98-128, at 5 (1999); NIPSCO-Bay State Acquisition, D.T.E. 98-31, at 9-10 (1998); Mergers and Acquisitions, D.P.U. 93-167-A at 7-9 (1995). To meet this standard, costs or disadvantages of a proposed merger must be accompanied by offsetting benefits that warrant their allowance. Eastern-Colonial Acquisition, D.T.E. 98-128, at 5-6 (1999); NIPSCO-Bay State Acquisition, D.T.E. 98-31, at 9-10 (1998); Mergers and Acquisitions, D.P.U. 93-167-A at 18-19 (1995).

#### V. ANALYSIS AND FINDINGS

At times, an incumbent utility will voluntarily allow an adjacent utility to provide service to a limited area of the incumbent's service territory, generally for economic or geographic reasons. The Department has long recognized that there is nothing necessarily legally impermissible about breaking off marginal areas or remote sections of franchises for economic reasons. MBIS Order, D.T.E. 00-41, at 35 n.84 (2000), citing Dedham and Hyde Park Gas Company, D.P.U. 9751, at 2 (1951)). In this case, NSTAR granted Colonial the right to serve

customers in a limited area of NSTAR's franchised service territory until such time as NSTAR should be able to serve the area.

While the delivery and supply rates of NSTAR differ from those of Colonial, the Department notes that transfer would result in savings for the majority of customers in Plymouth now being served by Colonial with de minimis increases for a few customers (DTE-RR-7). Moreover, in the current situation, where two gas companies are operating in the same community municipal officials must, in the event of an emergency situation, determine whether NSTAR or Colonial is the appropriate company to contact (Tr. at 29). This process would necessarily take time that could be more effectively spent responding to the emergency. The reversion of Cedarville, The Ponds, and Buttermilk Bay to NSTAR will allow Plymouth to be served by a single gas company, thereby allowing town officials and residents to more effectively communicate in an emergency situation. The Department finds that this enhancement in public safety compensates for the relatively modest rate increases that a small minority of customers may experience.

The Department has evaluated the benefits and costs associated with the transfer based on the following factors: (1) effect on rates; and (2) effect on the quality of service. Based on the above analysis, the Department finds that the proposed transfer would result in savings for the majority of customers in Plymouth now being served by Colonial, while increasing the quality of service through greater ease of coordination of emergency efforts by town officials. Therefore, the Department finds that the public interest would be at least as well served by the transfer as by its denial, i.e., that there is not net harm to ratepayers. Therefore, the proposed transfer is consistent with the public interest. Accordingly, the Department approves the 2002 Agreement, under the terms of G.L. c. 164, §§ 76 and 96.



VI. ORDER

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That, pursuant to G.L. c. 164, §§ 76 and 96, the Department approves and authorizes the Agreement dated August 1, 2002 between Colonial Gas d/b/a KeySpan Energy Delivery New England and NSTAR Gas Company for the sale of certain distribution assets in the sections of Plymouth known as Cedarville, The Ponds, and Buttermilk Bay; and it is

FURTHER ORDERED: That pursuant to G.L. c. 164, § 96, the Agreement dated as of August 1, 2002, between Colonial Gas Company d/b/a KeySpan Energy Delivery New England and NSTAR Gas Company, and the terms thereof, are hereby approved; and it is

FURTHER ORDERED: That upon consummation of the transaction, Colonial Gas Company d/b/a KeySpan Energy Delivery New England shall file with the Department a schedule indicating, by account, the original cost of the property sold, the accrued depreciation thereon and the selling price of the property, together with a copy of the journal entry recording the transaction; and it is

FURTHER ORDERED: That NSTAR Gas Company shall record the property purchased from Colonial Gas Company d/b/a KeySpan Energy Delivery New England pursuant to this Order at the original cost as it appears on the records of Colonial Gas Company d/b/a KeySpan Energy Delivery New England, together with any accrued depreciation on the property so transferred; and it is

FURTHER ORDERED: That NSTAR Gas Company shall notify the Department of the completion of the main to serve Buttermilk Bay within ten (10) days of such completion; and it is



FURTHER ORDERED: That Colonial Gas Company d/b/a KeySpan Energy Delivery New England and NSTAR Gas Company shall comply with all directives contained in this Order.

By Order of the Department

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Paul B. Vasington, Chairman

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James Connelly, Commissioner

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W. Robert Keating, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).